IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5904 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHATAU JETHALAL THAKKAR - Petitioner(s)
Versus
DIVISIONAL CONTROLLER AND COMPETENT AUTHORITY - Respondent(s)

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Appearance :
MR CH VORA for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/06/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner, who was at the relevant time dismissed employee of

Gujarat State Road Transport Corporation, has prayed for an appropriate writ, direction and/or order quashing and setting aside the order passed by the learned Extra Assistant Judge, Kutchh – Bhuj passed in Civil Misc. Appeal No. 70 of 1995 dated 7th May, 1997 as well as the order passed by the respondent Corporation dated 8th February, 1995.

2. The petitioner was serving as a Conductor in the respondent – Gujarat State Road Transport Corporation and was allotted staff quarter while he was in service as per the policy of the Corporation and General Standing Order prevailing at the relevant time issued by the Civil Engineering Department of the Corporation. That the petitioner came to be dismissed from services somewhere on 12th May, 1984 and on account of the dismissal from the services, the petitioner was asked by the Corporation to vacate the staff quarter occupied by him and inspite of various notices, the petitioner did not vacate the staff quarter though dismissed in

1984, however, handed over the possession of the said staff quarter to the Corporation somewhere on 13th December, 1994. That thereafter the Corporation issued the impugned order dated 8th February, 1995 directing the petitioner to pay Rs.26,594/- by way of market rent for the period between 1984 to 1994 with respect to the staff quarter occupied by him treating it as unauthorized occupation. That in the aforesaid order the Corporation held that the petitioner is liable to pay the market rent in pursuance of General Standing Order No. 975/1992 at the rate of Rs.800/- per month from June – 1992 and the respondent Corporation calculated the rent at the rate of Rs.60/- per month from June – 1984 to May – 1990 and at the rate of Rs.800/- from June – 1992 to December – 1994 and in all calculated the rent to the tune of Rs.30,560/- and after deducting the amount which was already recovered to the tune of Rs.3,966/-, directed that the remaining amount to the tune of Rs.26,594/- shall be recovered from the salary of the petitioner every month. That being

aggrieved and dissatisfied with the impugned order dated 8th February, 1995, the petitioner preferred appeal before the District Court under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act; 1971 (hereinafter referred to as “the Act” for short) being Civil Misc. Appeal No. 70 of 1995. That the learned Extra Assistant Judge, Kutchh – Bhuj dismissed the said appeal confirming the order passed by the Corporation dated 8th May, 1995 by its judgment and order dated 7th May, 1997. Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the learned Extra Assistant Judge, Kutchh – Bhuj dated 7th May, 1997 passed in Civil Misc. Appeal No. 70 of 1995 in dismissing the same and confirming the order passed by the Corporation dated 8th February, 1995 directing the petitioner to pay Rs.26,594/- being market rent as the petitioner was in unauthorized occupation of the staff quarter when he was dismissed from services, the petitioner has preferred the present Special Civil Application under Article 227 of the

Constitution of India.

3. Shri C.H.Vora, learned advocate appearing for the petitioner has submitted that the impugned order of the Corporation directing the petitioner to pay the market rent for the period of unauthorized occupation is absolutely illegal and contrary to Section 7 of the Act. It is submitted that before passing the impugned order directing the petitioner to pay the market rent for the period of unauthorized occupation, no notice in writing as required under Section 7 (3) of the Act has been issued and therefore, the impugned order is in breach of Section 7 (3) of the Act and the same is required to be quashed and set aside. Shri Vora has relied upon the decision of the learned Single Judge of this Court in case of ***Fulaji Okhaji Thakore V/s. Union of India & Anothers*** reported in **1985 (1) GLR 434.** It is submitted by him that as held by this Court when the order for damages for unauthorized occupation is passed without issuing notice to show cause, the said order is

in breach of Section 7(3) of the Act and the same deserves to be quashed and set aside. Therefore, it is requested to allow the present Special Civil Application and to direct the respondent Corporation to refund the amount already recovered pursuant to the impugned order passed by the Corporation. Shri Vora has further submitted that the appellate Court has erred in not considering the aforesaid aspects. By way of amendment it is also submitted that after 1994 the petitioner was reinstated in services pursuant to the order passed by the Labour Court without back-wages and therefore, when the petitioner was reinstated in services, there is no question of recovery of any market rent considering the occupation of the petitioner as unauthorized. By making above submissions, Shri Vora has requested to allow the present Special Civil Application.

4. The petition is opposed by the Corporation and an affidavit in reply is also filed on behalf of the Corporation. Relying upon the affidavit in

reply, Shri H.S.Munshaw, learned advocate appearing for the Corporation has submitted that the petitioner was allotted the staff quarter as per the service conditions and the General Standing Order and the said General Standing Order came to be modified time to time and as per the latest modified General Standing Order, which the petitioner has never challenged, after the dismissal, transfer and/or retirement, if the employee still continues to occupy the staff quarter then he is required to pay the market rent after the period of three months and therefore, Section 7 (3) of the Act would not be applicable as strictly speaking the same cannot be said to be an order of damages as contemplated under Section 7 of the Act and the recovery is sought on the basis of the General Standing Order of 1992 and therefore, the decision of the learned Single Judge relied upon by the petitioner is not applicable to the facts of the present case. Shri Munshaw has relied upon the decision of the Hon'ble Supreme Court in case of ***Union of India & Another V/s. Wing***

Commander, R.R.Hingorani (Retd.) reported in **AIR 1987 SC 808** and has submitted that in similar set of circumstances, the Hon'ble Supreme Court has confirmed the order of the authority to recover the damages equivalent to market rent by holding that prior notice to employee not necessary. Therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. It is not in dispute that the petitioner, who was serving as a Conductor was allotted staff quarter while he was on duty as per the policy of the Corporation and as per the General Standing Order with regard to the allotment of the quarters. It is also not in dispute that the petitioner came to be dismissed from services on 12th May, 1984 and as per the General Standing Order, on dismissal, he was not entitled to retain the staff quarter which was allotted to him while he was in services. As per the General

Standing Order, after the period of three months, the occupation of such employee is to be treated as unauthorized occupation and is required to pay three times rent at the relevant time and subsequently, as per the modified General Standing Order, the market rent. Thus, admittedly the petitioner was in unauthorized occupation of the staff quarter after three months of dismissal from services and he was not entitled to retain the possession of the staff quarter. Thus, the petitioner was required to pay the market rent as per the General Standing Order of 1992 and the petitioner has never challenged the said General Standing Order and as an employee of the Corporation, the petitioner is bound by the said General Standing Order of 1992. Thus, there was no question of assessment of any damages and as per the General Standing Order, automatically after completion of three months of dismissal, transfer and/or retirement, an employee is required to pay the market rent till he retains the possession of the staff quarter and/or he hands over the

possession of the staff quarter.

7. Shri Vora, learned advocate appearing for the petitioner has heavily relied upon sub-section 3 of Section 7 of the Act and has submitted that before passing any order of damages under sub-section 2 of Section 7 the Act, show cause notice is required to be issued and thereafter, after giving an opportunity, an order for damages is required to be passed and for that purpose, he has relied upon the decision of this Court in case of ***Fulaji Okhaji Thakore*** (supra). It is required to be noted that sub-section (3) of Section 7 of the Act is to be applied in a case where the damages is to be assessed for the period of unauthorized occupation. The basic intention of providing opportunity is that sufficient opportunity is to be given before assessing the damages for the period of unauthorized occupation. Whenever the question of assessment is there, an opportunity is required to be given as contemplated under sub-section (3) of Section 7 of the Act, however, in

a case where the employee is governed by the policy of the employer (in the present case the Corporation) and they are governed by some standing order and any amount / damages is required to be paid as per the said standing order, which is determined and there is no further discretion given, in that case, the notice as contemplated under sub-section (3) of Section 7 of the Act is not required to be given. In the present case, as per the General Standing Order of 1992, after completion of three months of dismissal, transfer and/or retirement, an employee who has not vacated the staff quarter allotted to him while he was in services his occupation is required to be considered as unauthorized occupation and he is required to pay the market rent for the period of unauthorized occupation. There is no other discretion vested in the Corporation. Under the circumstances, there is no question of further assessment by the Corporation. Even if the opportunity is given then also he is required to pay the damages by way of market rent for the

period while he is in unauthorized occupation of the staff quarter. It is an admitted position that the petitioner was in unauthorized occupation. Under the circumstances, even if the opportunity would have been given in that case also, the position would not be changed as he is required to pay the market rent as per the General Standing Order of 1992. Under the circumstances, according to this Court, in a case where there is no question of assessment of damages and the parties are governed by their own policy and the standing order and the damages by way of market rent is required to be paid for the period of unauthorized occupation and the notice under sub-section (3) of Section 7 of the Act is not issued, in that case also, the said order is not vitiated. Similar view has been taken by the Hon'ble Supreme Court in case of ***Union of India & Another*** (supra) and in that case, an order for damages by way of market rent as per the policy of the authority was issued and the Hon'ble Supreme Court confirmed the said order. In the case before this Court in case of

Fulaji Okhaji Thakore (supra) the parties were not governed by any standing order like in the present case whereby, automatically after the period of three months, the occupation is required to be considered as unauthorized occupation and such an employee is required to pay the market rent by way of damages. Under the circumstances, the decision of this Court will not be of any assistance to the petitioner.

8. Now so far as the contention on behalf of the petitioner that after 1994 the petitioner was reinstated in services and therefore, the occupation of the petitioner cannot be said to be unauthorized is concerned, the same cannot be accepted for the simple reason that the dispute is with regard to the period between 1984 to 1994 and the petitioner was not in service for the said period and he handed over the possession to the Corporation in December – 1994. Thus, admittedly the petitioner was in unauthorized occupation for the period between 1984 to 1994 as he was not in services and was

dismissed and was required to hand over the possession immediately on dismissal and could not have retained the possession of the staff quarter while he was not in services.

9. The entire amount has already been recovered by the Corporation as no interim relief was granted by this Court. There is no any illegality committed by the appellate Court in dismissing the appeal and confirming the order passed by the Corporation directing the petitioner to pay the market rent by way of damages for the period from 1984 to 1994 treating the occupation of the petitioner as unauthorized during the period while he was not in services (he was dismissed). There is no jurisdictional error committed by the appellate Court which calls for the interference of this Court in exercise of powers under Article 227 of the Constitution of India. Even otherwise, as stated above, on merits also, the impugned order passed by the Corporation does not call for any interference. As stated above, the order is not vitiated for non-

issuance of the notice as required under Section 7 (3) of the Act.

10. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly, dismissed. Rule is discharged. No costs.

[M.R.Shah, J.]

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